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and all other similarly situated individuals.*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

ANAM ABBAS,
individually and on behalf of a class of
similarly situated persons,

Plaintiff,

vs.

EARLY WARNING SERVICES, LLC,

Defendant.

)
) No. CV-15-01976-PHX-DLR
)
) CLASS ACTION
)
) **PLAINTIFF'S UNCONTESTED**
) **MOTION FOR SERVICE AWARD**
) **AND AWARD OF ATTORNEYS'**
) **FEES AND LITIGATION**
) **EXPENSES AND**
) **MEMORANDUM IN SUPPORT**
) **THEREOF**

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1 Plaintiff Anam Abbas (“Ms. Abbas” or “Plaintiff”), through her undersigned
2 counsel, respectfully presents the following uncontested motion for an award of her
3 reasonable and necessary attorneys’ fees and litigation expenses. Plaintiff’s motion is
4 supported by the below Memorandum of Points and Authorities and the following
5 documents, all of which are attached and incorporated by reference: (1) the Declaration of
6 John Soumilas (Exhibit 1) and its Exhibits A-D; (2) the Declaration of Paul B. Mengedoth
7 (Exhibit 2) and its Appendix I; and Plaintiffs’ proposed order.

8 **I. INTRODUCTION**

9 On October 4, 2016, the Court granted preliminary approval (Doc. 45) of the
10 Settlement set forth in the September 19, 2016 Settlement Agreement in this class action
11 matter. Pursuant to the Court’s Order, Plaintiff now seeks an award of attorneys’ fees and
12 litigation expenses for Class Counsel and a service award for her efforts in connection with
13 this action. As detailed herein, the requested service award for Ms. Abbas is fair and
14 reasonable in light of her efforts on behalf of the Class. Additionally, the requested
15 attorneys’ fees and expenses are reasonable and in line with precedent.

16 The Parties to this matter have, at arm’s length, and after negotiating relief for the
17 class, negotiated an award of attorneys’ fees and litigation expenses to which Defendant
18 will not object, of \$90,000. Class Counsels’ fees are reasonable in light of the nearly full
19 statutory damage recovery achieved by Class Counsel in this action and Class Counsel’s
20 actual time spent prosecuting this mandatory fee-shifting matter, as reflected in Class
21 Counsel’s lodestar, which is well in excess of the \$90,000 request here.

22 In this matter, each Class Member who did not opt out will receive an automatic
23 FCRA statutory damages payment of \$900, without the need to submit a claim. This result
24

1 is close to the maximum statutory recovery of \$1,000.00 available for a willful violation
 2 of the FCRA. 15 U.S.C. § 1681n(a)(1)(A). Further, payments to Actual Damages Class
 3 Members will be at least \$3,500 and as much as \$7,500. Given this excellent recovery for
 4 the Class, no Class Member objected to the Settlement, the service award, or the requested
 5 attorneys' fees and litigation expenses. Likewise, Defendant does not oppose this relief.

6 **II. ARGUMENT**

7 **A. A \$6,000.00 Service Award to Plaintiff Is Fair, Reasonable, and** 8 **Uncontested by Defendant**

9 Service awards "are fairly typical in class action cases." *Rodriguez v. West Publ'g*
 10 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Such awards "serve an important function in
 11 promoting class action settlements." *Sheppard v. Cons. Edison Co. of NY., Inc.*, No. 94
 12 CV-0403(JG), 2002 U.S. Dist. LEXIS 16314, at *16 (E.D.N.Y. Aug. 1, 2002). The Ninth
 13 Circuit has recognized that service awards "are intended to compensate class
 14 representatives for work done on behalf of the class, to make up for financial or reputational
 15 risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act
 16 as a private attorney general." *Rodriguez*, 563 F.3d at 958-59.

17 Service awards are committed to the sound discretion of the trial court and should
 18 be awarded based upon the court's consideration of, *inter alia*, the amount of time and
 19 effort spent on the litigation, the duration of the litigation and the degree of personal gain
 20 obtained as result of the litigation. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,
 21 299 (N.D. Cal. 1995).

22 Here, Class Counsel respectfully requests that the Court approve a service award
 23 of \$6,000 for Ms. Abbas, in recognition of her contributions toward the successful
 24 prosecution of this litigation. Ms. Abbas's service as class representative has been

1 laudable. She sought out relief not only for herself but also all other similarly situated,
 2 retained experienced class counsel, cooperated fully in the pre-suit investigation and in
 3 discovery, and provided document and other information needed to properly prosecute this
 4 matter and achieve a very favorable settlement for the class. Moreover, Defendant does
 5 not oppose a \$6,000 service award to Ms. Abbas, which award was negotiated after, and
 6 separately from, the relief afforded to the Class. Ms. Abbas is deserving of a service award
 7 of \$6,000.¹

8 **B. Class Counsel’s Request for an Award of Attorneys’ Fees and**
 9 **Litigation Expenses in the Amount of \$90,000 Is Fair, Reasonable, and**
 10 **Uncontested by Defendant**

11 The Ninth Circuit has adopted a lodestar/multiplier approach for assessing the
 12 amount of reasonable attorney fees. *D'Emanuele v. Montgomery Ward & Co., Inc.*, 904
 13 F.2d 1379, 1383 (9th Cir. 1990), *citing Hensley v. Eckerhart*, 461 U.S. 424, 433, 434 n.9,
 14 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Under a fee-shifting statute such as the FCRA,
 15 the lodestar method is generally the correct method for calculating attorneys’ fees. *Staton*
 16 *v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). The lodestar/multiplier analysis has two
 17 parts. The Court first calculates the lodestar amount by multiplying the number of hours
 18 the prevailing party reasonably expended on the litigation by a reasonable hourly rate.

19 ¹ The amount requested is in line with amounts awarded in other class action cases.
 20 *See, e.g., Bruno v. Quten Research Inst., LLC*, No. SACV 11-00173 DOC(Ex), 2013 U.S.
 21 Dist. LEXIS 35066, at *7-*8 (C.D. Cal. Mar. 13, 2013) (approving \$8,000 incentive
 22 award); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV-08-1365-CW(EMC), 2010 U.S.
 23 Dist. LEXIS 49477, at *47 (N.D. Cal. Apr. 22, 2010) (service award of \$20,000 was “well
 24 justified” given plaintiffs’ efforts on behalf of the class) (compiling cases); *Pellet v.*
Weyerhaeuser Co., 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (“When compared to
 service awards in other cases, the \$7,500 payments requested here are justified.”); *In re*
Ins. Brokerage Antitrust Litig., No. 04-5184-GEB, 2007 U.S. Dist. LEXIS 40729, at *68
 (D.N.J. June 5, 2007) (approving incentive award of \$10,000); *Van Vranken*, 901 F. Supp.
 at 300 (approving service award of \$50,000).

1 *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). The product of this
2 computation yields a presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729
3 F.3d 1196, 1202 (9th Cir. 2013); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th
4 Cir. 2008). The Court may consider the following factors: (1) the time and labor required;
5 (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform
6 the legal service properly; (4) the preclusion of other employment by the attorney; (5) the
7 customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by
8 the client or the circumstances; (8) the amount involved and the results obtained, (9) the
9 experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case;
10 (11) the nature and length of the professional relationship with the client; and (12) awards
11 in similar cases. *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

12 Additionally, Arizona’s local rules also contain a list of the following
13 nonexhaustive factors closely tracking *Kerr*: (1) the time and labor required of counsel;
14 (2) the novelty and difficulty of the questions presented; (3) the skill requisite to perform
15 the legal service properly; (4) the preclusion of other employment by counsel because of
16 the acceptance of the action; (5) the customary fee charged in matters of the type involved;
17 (6) whether the fee contract between the attorney and the client is fixed or contingent;
18 (7) any time limitations imposed by the client or the circumstances; (8) the amount of
19 money, or value of the rights involved, and the results obtained; (9) the experience,
20 reputation and ability of counsel; (10) the “undesirability” of the case; (11) the nature and
21 length of the professional relationship between the attorney and the client; (12) awards in
22 similar actions; and (13) any other matters deemed appropriate under the circumstances.
23 *See* L. R. Civ. 54.2(A)-(M).

1 Importantly, the Fair Credit Report Act (FCRA), the statute under which this class
2 action was prosecuted, mandates reasonable attorneys’ fees and cost in any successful
3 action to enforce liability. 15 U.S.C. §§ 1681n and o. The purpose of awarding attorney
4 fees under the FCRA is to encourage enforcement of the statute by consumers, acting as
5 “private attorneys general.” *See Bryant v. TRW, Inc.*, 689 F.2d 72, 79 (5th Cir. 1982). In
6 FCRA actions, attorneys’ fees can be, and often are, much higher than the recovery
7 received by plaintiffs. *See, e.g., Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201,
8 217 (E.D. Pa. 2011) (large attorneys’ fees award in FCRA class action “eminently
9 reasonably” when fee request was less than lodestar and class members received credit
10 monitoring only). However, because Plaintiff prevailed on the statutory fee-shifting FCRA
11 claim, the fee award cannot be diminished to maintain some ratio between the fee and the
12 individual statutory damages award and no proportionality analysis applies between the
13 amount of the recovery for plaintiffs and the amount of attorneys’ fees reasonably incurred
14 in achieving that recovery. *City of Riverside v. Rivera*, 477 U.S. 561 (1986) (affirming
15 award of \$245,456 in fees where plaintiff received \$13,300 in damages in civil rights
16 litigation).

17 Here, the parties negotiated the mutually agreeable amount of \$90,000 for Class
18 Counsel’s attorneys’ fees and litigation expenses after, and separately from, the relief
19 afforded to the Class. This amount is fair and reasonable when evaluated under the lodestar
20 method as it less than the total amount of attorneys’ fees actually incurred, \$105,789.25.

21 1. *The Hourly Rates of Class Counsel Are Reasonable*

22 Class Counsel’s requested hourly rates are in line with awards from elsewhere in
23 the Ninth Circuit. *See, e.g., POM Wonderful, LLC v. Purely Juice, Inc.*, No. 07-2633, 2008
24 U.S. Dist. LEXIS 110460, at *11-*13 (C.D. Cal. Sept. 22, 2008) (partner rates of \$750 to

\$450 and associate rates of \$425 to \$275 were reasonable); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (affirming reasonableness of hourly rates where partner rates were up to \$875, associates charged \$425, and paralegals charged \$190); *Iorio v. Allianz Life Ins. Co. of N Am.*, No. 05-CV-0633, 2011 U.S. Dist. LEXIS 21824, at *31 (S.D. Cal. Mar. 3, 2011) (rates from \$410 to \$750 for attorneys, and \$195 for paralegals were reasonable); *Lingenfelter v. Astrue*, No. SA CV-03-00264-VBK, 2009 U.S. Dist. LEXIS 87685, at *11 (C.D. Cal. Sep. 3, 2009) (\$600 is “reasonable”); *Love v. Mail on Sunday*, No. CV-05-7798-ABC(PJWX), 2007 U.S. Dist. LEXIS 97061, at *25 (C.D. Cal. Sept. 7, 2007) (approving partner rates of \$540-\$690 and associate rates of \$305-\$485).

Class Counsel Francis & Mailman, P.C.’s rates are as follows: \$580 per hour for James A. Francis, \$470 per hour for John Soumilas, \$300 per hour for Jordan M. Sartell, and \$200 per hour for Lauren KW Brennan. *See* Soumilas Dec. at ¶ 5, Ex. B. Class Counsel Paul Mengedoth’s hourly rate is \$425. *See* Mengedoth Dec. at ¶ 13. This Court should approve Class Counsel at the indicated rates in light of their significant experience litigating FCRA actions and the exceptionally good result obtained for the Class Members in this case.²

2. *The Number of Hours Billed is Reasonable*

Class Counsel worked for approximately 295 hours during the course of this action for a total lodestar of \$105,789.25. These hours are properly described in the attached declarations of Soumilas and Mengedoth and reasonably incurred in the prosecution of this

² The rates requested in this Motion are Class Counsel Francis and Mailman, P.C.’s lower, 2014 rates. *See* Exhibit B to Soumilas Declaration. The firm’s rates for similar work are slightly higher in 2017.

1 action. Notwithstanding, in the interest of obtaining a good settlement result for the Class
2 Members, Class Counsel negotiated with Defendant such that Defendant agreed not to
3 contest an attorneys' fees award of \$90,000.00. Class Counsel urges this Court to award
4 that sum in light of the agreement of the Parties and the good result obtained for the Class
5 Members.

6 3. *Other Factors*

7 The universally favorable reaction of the class supports approval of the fee award.
8 No Class Member objected to the settlement or the fee award requested and only one
9 Member requested to be excluded.

10 4. *Class Counsel Incurred \$858.13 in Litigation Expenses*

11 Class Counsel seeks reimbursement for \$858.13 in litigation-related expenses
12 reasonably incurred in the course of this action. *See* Mengedoth Dec., Appx. 1; Soumilas
13 Dec. Exhibit C. This amount is included in the \$90,000 amount negotiated by the Parties.

14 **III. CONCLUSION**

15 Class Counsel's request for \$90,000 in attorneys' fees and litigation expenses is
16 well within the range of awards that district courts have allowed in analogous cases. And
17 against the backdrop of the significant and time-intensive work performed by Class
18 Counsel in connection with this case, this award is fair and reasonable and should be
19 approved. As noted, Defendant does not oppose these awards. Plaintiff respectfully
20 requests that the Court approve a service award of \$6,000.00 to Ms. Abbas, award Class
21 Counsel attorneys' fees and litigation expenses of \$90,000.

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Respectfully submitted,

Francis & Mailman, P.C.

DATE: February 24, 2016

/s/ John Soumilas

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